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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/509,817	01/05/2005	Thomas Bruemmer	F-8387	8342

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JORDAN AND HAMBURG LLP
122 EAST 42ND STREET
SUITE 4000
NEW YORK, NY 10168

EXAMINER	
TRAN LIEN, THUY	
ART UNIT	**PAPER NUMBER**
1794	
MAIL DATE	**DELIVERY MODE**
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/509,817	BRUEMMER, THOMAS	
	Examiner	Art Unit	
	Lien T. Tran	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 May 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-45* is/are pending in the application.

4a) Of the above claim(s) *26-30,42 and 43* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-25,31-41,44 and 45* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *9/30/04*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Applicant's election with traverse of Group I claims 1-25, 31-41, 44-45 in the reply filed on 5/21/08 is acknowledged. The traversal is on the ground(s) that the inventions are directly related and no serious burden exists. This is not found persuasive because the inventions are not directly related and they are directed to distinct and independent inventions as pointed out the restriction. Applicant has not argued that the two inventions are not distinct and independent. Serious burden exists when different searches are required for the two inventions.

The requirement is still deemed proper and is therefore made FINAL.

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claims 1-25, 31-41, 44-45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1: Line 2, the phrase " powdery to grainy" is confusing because it is not known if the modified material is going from powdery to grainy or the product is modified powdery and modified grainy or what. It is also unclear what the term grainy encompasses; does it indicate the type of material or the size of the material or what? Lines 2-3 are confusing; it is not clear what applicant is trying to claim; does the recitation relate to the type of material or the state of the material or what. Lines 7-9,11-12, the recitation of " the at least one comminuted, starch-containing raw material" does not have antecedent basis because the claim has not positively set forth such material. Line 14, the recitation of " the mixture of water and raw material" does not have

antecedent basis. Lines 15-18, the recitation of " the temperature, the pressure, the water content, the mechanical energy, the residence time, the mixture" does not have antecedent basis. Lines 18-19 are confusing because it is not clear what applicant is claiming. What does applicant mean by " raw material product to a conveyable mixture"? Is the product forming a conveyable mixture or what? Also, what is the difference between plasticization and gelatinization? Line 21, " the pellets" do not have antecedent basis. Lines 22,24,26,30 the term " grainy" is indefinite because it is a relative term; what would be considered as " grainy"? Line 29, what does applicant mean by " mixing residence time for mixing'? Line 33, the recitation of " the particles" does not have antecedent basis; what particles is the claim referring to.

In claim 2: Line 6 is vague and indefinite; what does applicant mean by " provided all around with tools" . what tools and how all the tools provided. It is not clear what the tools encompass. The scope of the claim cannot be determined.

Claim 6 is vague and indefinite; the mixing chamber is filled with what to the extent of about 1 to 5%. Is this the raw material, the water or what?

Claim 7 has the same problem as claim 6.

In claim 8: Line 2, the recitation of " the pressure" does not have antecedent basis. Line 3, the recitation of " the temperature" does not have antecedent basis.

Claim 9 is vague and indefinite. Does applicant intend for a Markush group? If so, the proper language is " selected from the group consisting of". Line 4, the recitation of " is or will be " is confusing because it is not clear what the difference is because in either

case the fluids are metered into the product. The recitation of " powdery to grainy product" has the same problem as in claim 1.

In claim 10, the recitation of " is/are or will be" has the same problem as in claim 9.

In claim 13, the recitation of " the fraction" does not have antecedent basis.

Claims 14, 15,37,38 have the same problem as claim 13.

Claim 16 is vague and indefinite. What does applicant mean by " the during and between a and f'? What step is " the during"?

In claim 18: Line 2, the recitation of " the intermediate product" does not have antecedent basis. What intermediate product is the claim referring to.

Claim 19 has the same problem as claim 18.

In claim 33, the phrase " etc. and their mixtures and the like" is indefinite because it is not known what is included or excluded from such grouping. The phrase "and the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "and the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

In claim 39, the phrase " and the like" has the same problem as claim 33.

Claim 44 has the same problem as claim 33.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-25,31-41,44-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baker et al in view of Donnelly et al.

Baker et al disclose a method for processing grain. The process comprises the steps of precooking grain by a low moisture process, preconditioning by hydrating to a total moisture content of 10-40% in a ribbon blender or a preconditioning cylinder, extruding the hydrated material, cutting the extruded material with a rotating knife, drying the cut extrudate and grinding the product. The ground product may be agglomerated by feeding into an agglomerator and adding water and/or steam and/or a binder such as starch, modified starch, gum. The agglomerated product is then dried to a moisture content of about 5-15%. The precooked material may be ground and provided as flour, granules, flakes, pieces or a blend of the three. (see col. 3)

Baker et al do not disclose a preconditioner with mixing and action chambers, an agglomerator with mixing and action chambers having the structure as claimed, the residence time in the mixing and action chambers as claimed, the filling capacity as claimed, the pressure and temperature in the mixing and action chambers, classifying the agglomerate, reusing the agglomerate not meet the standard size, the speed of the

shaft in the mixing and action chambers, the particle size of the agglomerates, using an impact mill and the type of raw materials as claimed.

Donnelly et al disclose a method for forming couscous. The method uses a preconditioner or conditioner cylinder having an entrance and an exit. The cylinder contains twin laterally juxtaposed counterrotating shafts equipped with paddles to advance the raw material and to mix the material with the steam and water. (see col. 5 lines4-38)

Baker et al teach to use a preconditioning cylinder for hydrating the raw material with water. Thus, it would have been obvious to one skilled in the art to use a preconditioner as taught by Donnelly et al. The Donnelly et al preconditioner has the structure as claimed. The different parts of the cylinder are equivalent to the mixing and action chambers. For example, the raw material is advanced in one part of the preconditioner; this is the same as the claimed mixing chamber. The mixing takes place in a different part of the preconditioner which is equivalent to the claimed action chamber. It would have been obvious to one skilled in the art to determine the residence time, the temperature , the pressure and the speed in the preconditioner depending on the type of material being process and the degree of mixing desired. Such determination can readily be determined by one skilled in the art through routine experimentation. It would have been obvious to fill the preconditioner to any desired capacity depending on the size of the device and the quantity of material being processed. It would have been obvious to classify the agglomerate to size and to select any varying sizes depending on the intended use and the texture wanted. Such factor

is a result-effective variable which can readily be determined by one skilled in the art. It would have been obvious to reuse particles not meeting the size standard so that product material is not wasted. This would have been readily apparent to one skilled in the art. It would have been obvious to use an known device to grind the material and impact mill is well known in the art. It would have been an obvious matter of preference to select any time of grain material including wheat flour, corn flour, potato flour etc.. depending on the taste and flavor desired.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Anderson discloses a method for processing corn grit and product.

Karwowski discloses a method of preparing instant, flaked, wheat farina.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

July 14, 2008

/Lien T Tran/

Primary Examiner, Art Unit 1794